

California Regional Water Quality Control Board
Santa Ana Region

October 3, 2003

STAFF REPORT

ITEM: 8

SUBJECT: Amendment to Cease and Desist Order No. 00-87 (as amended by Order WQ 2001-08), to Extend the Deadline for Cessation of Direct Discharges of Wastes to the Irvine Coast Area of Special Biological Significance (ASBS) (Crystal Cove), Order No. R8-2003-107

SUMMARY:

Cease and Desist Order No. 00-87 (as amended by Order WQ 2001-08) required The Irvine Company, the California Department of Transportation (Caltrans) and the California Department of Parks and Recreation to cease direct discharges of wastes to Crystal Cove by November 16, 2002. Caltrans encountered permit approval delays, will have construction restrictions once work has begun, and consequently, has requested that that deadline be extended to February 28, 2005.

DISCUSSION:

Crystal Cove is located within the Irvine Coast Area ASBS (now also referred to as State Water Quality Protection Area). The State Ocean Plan defines an ASBS as "... those areas containing biological communities of such extraordinary value that no risk of change in their environment as the result of man's activities can be entertained." As such, the 1997 update of the Ocean Plan, in Chapter V - Discharge Prohibitions, states, "Wastes shall not be discharged to areas designated as being of special biological significance."

Based on that Ocean Plan prohibition, on November 16, 2000, the Regional Board adopted Cease and Desist Order No. 00-87. This Order prohibited all new discharges of waste to the Irvine Coast ASBS, between Los Trancos Creek and Muddy Canyon Creek and required that all existing discharges of waste from areas (including roadways) where construction began on or before November 16, 1996, cease by November 16, 2002. Affected dischargers were required to submit plans by May 16, 2001 for eliminating these discharges of waste.

Discharges identified in Cease and Desist Order No. 00-87 included: discharges from Pacific Coast Highway (PCH) to storm drain pipes draining to the beach and to Los Trancos Creek, downstream of PCH; various discharges from Crystal Cove State Park to the beach and/or surf zone; and, discharges from The Irvine Company's Crystal Cove development to the beach and to Los Trancos Creek, downstream of PCH.

On December 15, 2000, the State Water Resources Control Board (State Board) received a petition for review of Cease and Desist Order No. 00-87 from Caltrans, asking that the State Board find the action of the Regional Board to have been inappropriate or improper, or both and asking State Board to rescind the Order. On April 26, 2001, State Board upheld Cease and Desist Order No. 00-87, but amended the Order to grant Caltrans an additional year to submit their plan and to cease the direct discharge of wastes from PCH to Crystal Cove. Those dates were amended to May 16, 2002 for submission of the plan and November 16, 2003 for the cessation of discharges.

On May 14, 2002, Caltrans submitted a plan to address the direct discharges to Crystal Cove and that plan was approved by Regional Board staff. However, on July 10, 2003 Caltrans requested that the Regional Board further extend the deadline for cessation of discharges. Caltrans cited two reasons for the extension request. First, the Local Coastal Development Permit, to be issued by the California Coastal Commission was appealed and Caltrans will be unable to make any further progress on their plan until the matter is resolved. Second, Caltrans anticipates that once construction starts, there will be work restrictions during the nesting seasons of endangered and/or threatened species believed to be in the area. As a result, Caltrans requested an extension of the discharge cessation deadline to February 28, 2005. Staff believes that Caltrans request is based on unavoidable circumstances beyond their control and the request for extension is justified.

RECOMMENDATION:

Staff recommends that the Regional Board adopt Order No. R8-2003-0107 as presented.

Comments were solicited from the following:

U.S. Fish and Wildlife Service – Carlsbad
U.S. Army Corps of Engineers – Jae Chung
State Water Resources Control Board, Office of the Chief Counsel – Jorge Leon
State Water Resources Control Board, Division of Water Quality - James Maughan
State Department of Fish and Game - Long Beach
California Dept. of Parks and Recreation - David Pryor, Michael Tope, Donald H. Ito,
Richard Rozzelle
Caltrans District 12 - Ken Nelson, Leslie Manderscheid, Grace Pina-Garrett, Sylvia Vega
California Coastal Commission – Teresa Henry, Jack Gregg, Peter Douglas, Tami Grove
Orange County Public Facilities and Resources Department - Chris Crompton, Richard Boon
Orange County Health Care Agency - Seth Daugherty
City of Newport Beach – Dave Kiff
Natural Resources Defense Council - David Beckman
Orange County Coastkeeper – Garry Brown
California CoastKeeper – Michelle Lyman
Defend the Bay – Robert Caustin
Lawyers for Clean Water - Kim Lewand, Daniel Cooper
League for Coastal Protection - Susan Jordan
Alliance to Rescue Crystal Cove – Laura Davick
Irvine Community Development Company – Roberta Marshall, Sat Tamaribuchi

California Regional Water Quality Control Board
Santa Ana Region

ORDER NO. R8-2003-0107

Amendment to Cease and Desist Order (CDO) No. 00-87 (as amended by Order WQ 2001-08)
to Extend the Deadline for Cessation of Direct Discharges of Waste to Part of the Irvine Coast
Area of Special Biological Significance (ASBS) (Crystal Cove), Order No. R8-2003-107

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Board), finds that:

1. On November 16, 2000, the Board adopted CDO No. 00-87. The Order requires, in part, that direct discharges of waste to the Irvine Coast ASBS (now also referred to as State Water Quality Protection Area) from areas (including roadways) where construction began on or before November 16, 1996, shall cease by November 16, 2002 and that affected discharges shall submit plans for eliminating these discharges of waste by May 16, 2001. The CDO was issued to The Irvine Company, the California Department of Transportation (Caltrans) and the California Department of Parks and Recreation.
2. Caltrans petitioned the California State Water Resources Control Board (State Board) to review Order No. 00-87, asking that the State Board find the action of the Regional Board to have been inappropriate or improper, or both and asked State Board to rescind the Order. After a Public Hearing, State Board upheld Order No. 00-87, but granted Caltrans an additional year to prepare their plans for eliminating their discharges and to implement those plans and cease the discharge. The amended due date for delivery of plans for eliminating the direct discharge of waste was May 16, 2002 and the amended date for cessation of those discharges was November 16, 2003.
3. In compliance with the amended Order, Caltrans submitted their Plan of Action on May 14, 2002, which was approved by Regional Board staff. The implementation of the approved plan would have eliminated all direct discharges of wastes to the Irvine Coast ASBS from Caltrans facilities. However, unavoidable delays in the permitting processes of other agencies and work restrictions during the nesting seasons of endangered and/or threatened species will result in Caltrans being unable to meet the November 16, 2003 deadline for cessation of discharges to the Irvine Coast ASBS.
4. Caltrans has requested that the date for cessation of direct discharges of waste to the Irvine Coast ASBS from areas (including roadways) where construction began on or before November 16, 1996, be extended to February 28, 2005.
5. In accordance with Water Code Section 13389, the amendment of Order No. 00-87, as amended by WQ 2001-08, is exempt from those provisions of the California Environmental Quality Act contained in Chapter 3 (commencing with Section 21100), Division 13 of the Public Resources Code.

6. The Board has notified Caltrans and other interested agencies and persons of its intent to amend Order No. 00-87, as amended by WQ 2001-08, and has provided them with an opportunity to submit their written views and recommendations.
7. The Regional Board, in a public meeting, heard and considered all comments pertaining to the amendment.

IT IS HEREBY ORDERED that CDO No. 00-87, as amended by WQ Order No. 2001-08, be amended as follows:

Revise Provision (c) as follows: (additions are highlighted and bold, deletions are struck out)

- c) Direct discharges of waste to the Irvine Coast ASBS from areas (including roadways) where construction began on or before November 16, 1996, shall cease by February 28, 2005 ~~November 16, 2003~~. Affected dischargers shall submit plans by May 16, 2002 for eliminating these discharges of waste. The plans shall include detailed proposals and time schedules for eliminating the discharges and shall be implemented as approved by the Executive Officer.

All other conditions and requirements of Order No. 00-87, as amended by WQ 2001-08 shall remain unchanged.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on October 3, 2003.

Gerard J. Thibeault
Executive Officer